

SERVICE DATE – APRIL 18, 2007

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-3 (Sub-No. 137X)

MISSOURI PACIFIC RAILROAD COMPANY – ABANDONMENT EXEMPTION – IN RED
RIVER AND BOWIE COUNTIES, TX

Decided: April 17, 2007

By decision served and published in the Federal Register (61 FR 66748) on December 18, 1996, the Missouri Pacific Railroad Company (MP)¹ was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 23.0 at New Boston, in Bowie County, TX, to the end of the track at milepost 61.5 near Clarksville, in Red River County, TX, a distance of approximately 38.5 miles.² The exemption became effective on January 17, 1997. On December 30, 1996, Rails to Trails Conservancy (RTC) timely filed a request for issuance of a notice of interim trail use (NITU) and submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. RTC also acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. On January 3, 1997, UP agreed to the imposition of a trail use condition in this proceeding.

By decision and NITU served on February 14, 1997, a 180-day period was authorized for RTC to negotiate an interim trail use/rail banking agreement with MP for the right-of-way. In a letter filed on July 16, 1997, UP notified the Board that the right-of-way had been conveyed to RTC, effective July 3, 1997.

In joint motion filed on June 15, 2005, RTC and Bowie County, TX (County), requested the substitution of the County as interim trail user for that portion of the right-of-way from milepost 23.0 to milepost 42.59 at the Red River County line, including all bridges and ballast, a distance of approximately 19.59 miles. UP consented to the substitution request and by decision and NITU served on July 1, 2005, the request was granted. RTC remained the interim trail manager for the portion of the line between milepost 42.59 and milepost 61.5.

¹ MP merged with and into Union Pacific Railroad Company (UP). In this decision and notice, the abandoning railroad will be referred to as either MP or UP.

² In the same decision, the Board also exempted discontinuance of service on the line. See Texas Northeastern Division, Mid-Michigan Railroad, Inc. – Discontinuance of Service Exemption – In Red River and Bowie Counties, TX, STB Docket No. AB-364 (Sub-No. 3X).

On March 28, 2007,³ RTC and the cities of Avery, Annona, and Clarksville in Red River County filed a joint motion for substitution of the interim trail user on the 18.91-mile corridor between milepost 42.59 and milepost 61.5. Petitioners state that RTC and the cities of Avery, Annona, and Clarksville have entered into an agreement to transfer to each of the three cities ownership of, and management responsibility for, the portion of the line within their respective city limits, including all bridges and ballast, pursuant to the Trails Act. Under the agreement, Avery would acquire the right-of-way from milepost 42.59 to approximately milepost 49 (Engineering Station 2587+20); Annona would acquire the portion of the right-of-way from approximately milepost 49 (Engineering Station 2587+20) to approximately milepost 56 (Engineering Station 2956+80); and Clarksville would acquire the portion of the right-of-way from approximately milepost 56 (Engineering Station 2956+80) to milepost 61.5. UP has consented to the proposed substitution.

Petitioners have submitted a copy of the extant NITU and individual statements from Avery, Annona, and Clarksville that express each city's willingness to assume financial responsibility as the new trail user for the portion of the line that runs through each respective city. Petitioners' submission meets the requirements of 49 CFR 1152.29(f), and the requested relief will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on February 14, 1997, is vacated for that portion of the right-of-way from milepost 42.59 to milepost 61.5.
3. A replacement NITU is issued applicable to: (a) Avery as interim trail user for that portion of the right-of-way from milepost 42.59 to approximately milepost 49 (Engineering Station 2587+20); (b) Annona as interim trail user for that portion of the right-of-way from approximately milepost 49 (Engineering Station 2587+20) to approximately milepost 56 (Engineering Station 2956+80); and (c) Clarksville as interim trail user for that portion of the right-of-way from approximately milepost 56 (Engineering Station 2956+80) to milepost 61.5.
4. The new trail users are required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

³ The Cities initially filed their motion on February 20, 2007, but the request was not complete until a March 28, 2007 supplemental filing.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new users' continuing to meet the financial obligations for the right-of-way.

6. If a new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. This decision and notice is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary